



COMMUNITY DEVELOPMENT DEPARTMENT

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Website Address: www.morgan-hill.ca.gov

PLANNING COMMISSION MEETING MINUTES

REGULAR MEETING

NOVEMBER 8, 2011

PRESENT: Moniz, Mueller, Koepp-Baker, Benich, Dommer, McKay

ABSENT: None

LATE: Tanda

STAFF: Planning Manager (PM) Rowe, Senior Planner (SP) Linder, Senior Planner (SP) Tolentino

Chair Moniz called the meeting to order at 7:00 p.m., inviting all present to join in reciting the pledge of allegiance to the U.S. flag.

DECLARATION OF POSTING OF AGENDA

Senior Planner Tolentino certified that the meeting's agenda was duly noticed and posted in accordance with Government Code Section 54954.2.

OPPORTUNITY FOR PUBLIC COMMENT

Chair Moniz opened, and then closed, the floor to public comment for matters not appearing on the agenda as none were in attendance indicating a wish to address such matters.

ORDERS OF THE DAY

No changes.

MINUTES:

October 11, 2011 COMMISSIONERS MUELLER AND DOMMER MOTIONED TO APPROVE THE OCTOBER 11, 2011 MINUTES

THE MOTION PASSED (5-0-1-1) WITH THE FOLLOWING VOTE: AYES: UNANIMOUS; NOES: NONE; ABSTAIN: BENICH; ABSENT: TANDA

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**CONT'D PUBLIC
HEARINGS:**

**1) URBAN
SERVICE AREA
ADJUSTMENTS
AND GENERAL
PLAN AND
ZONING
AMENDMENT
APPLICATIONS
FOR THE
MONTEREY-
SOUTH OF
WATSONVILLE
PROJECT:**

The “Monterey-South of Watsonville Project” is a compilation of three separate applications encompassing 17 parcels totaling 67.39 acres in size. The three application areas are geographically located adjacent to one another on Monterey Road, south of Watsonville Road. Due to their proximity, the environmental assessment and staff report evaluate the individual applications as one project. Provided below is a description of the individual applicant requests.

A.USA-06-01/GPA-07-02/ZA-08-09: Watsonville – Royal Oaks Enterprises:

A request to amend the General Plan Land Use Designation, prezone, and add six parcels into the Morgan Hill Urban Service Area Boundary. The project area totals 17.34 acres in size. Four of the six parcels propose a General Plan Amendment (GPA) from *Single Family Medium* to *Non-Retail Commercial*, with prezoning to *Light Commercial-Residential* from County Agriculture (A-20Ac). On one of the parcels, a GPA from *Single Family Medium* to *Multi-Family Medium* and prezoning to *Medium-Density Residential (R3)/Planned Development* from Agriculture (A-20Ac) is proposed. The remaining parcel is Santa Clara Valley Water District property and will be prezoned to *Open Space* from Agriculture (A-20Ac) to allow for consistency with the existing General Plan *Open Space* designation. The project is located south of Watsonville Road and southeast of Monterey Road. A mitigated Negative Declaration is proposed (APNs 779-04-001, -003, -004, -052, -056, and -067).

B.USA-08-08/GPA-08-08/ZA-08-08: Monterey – Morgan Hill Bible Church:

A request to amend the General Plan Land Use Designation, prezone, and add two parcels into the Morgan Hill Urban Service Area Boundary. The project area totals 9.48 acres in size. A General Plan Amendment from *Single Family Low* to *Public Facility* and prezoning to *Public Facility* from County Agriculture (A-20Ac) is proposed for both parcels. The project is located southeast of Monterey Road, between John Wilson Way and West Middle Avenue. A mitigated Negative Declaration is proposed (APNs 779-04-016 and -061).

C.USA-08-09/GPA-08-09/ZA-08-10: Monterey – City of Morgan Hill:

A request to amend the General Plan Land Use Designation, prezone/rezone, and add nine parcels into the Morgan Hill Urban Service Area (USA) Boundary. The project area totals 40.57 acres in size. Seven of the nine parcels are currently located within the City limit but outside the USA. On six of the parcels, a General Plan Amendment (GPA) from *Single Family Medium* to *Non-Retail Commercial* and rezoning to *Light Commercial-Residential* from *RE (100,000)* is proposed. On two of the parcels, a GPA from *Single Family Low* to *Non-Retail Commercial* and prezoning to *Light Commercial-Residential* from County Agriculture (A-20Ac) is proposed. The Oakwood Country School is located on the remaining parcel; the General Plan designation of *Single Family Medium* will remain the same on the school site, but a zoning change from *RE(100,000)* to *R1(9,000)* is proposed. No specific development is proposed by the project at this time. The project is located southeast of the intersection of Monterey Road and Watsonville Road. A mitigated Negative Declaration is proposed (APNs 779-04-005, -010, -015, -030, -032, -033, -072, -073, and -074).

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[Commissioner Tanda arrived at 7:03 pm.]

Tolentino presented her staff report.

Koepp-Baker: If we make this zoning change, when is the next time this could be re-zoned?

Tolentino: Once it is zoned commercial, it can't be changed right away. I believe it couldn't be rezoned for at least two years.

Mueller: If it is public facility, I think the Municipal Code allows a change in two years. Anything non-residential or industrial can't be changed until Measure C would either sunset (which is at least nine years), or until Measure C could be modified to allow a change, or until the vacancy threshold of less than 5 percent is met. So if it comes into the Urban Service Area (USA) as non-residential/industrial, it couldn't be changed even by a General Plan update anytime in the foreseeable future without going to a vote of the people.

Mueller: I would like to hear from the environmental consultant on the E-14 comment from LAFCO, which suggests that the document needs to be modified and recirculated.

Tanda: I would like clarification on comments E-6 through E-8, which all say that the "project's consistency with applicable LAFCO policies is addressed in the staff report." I looked at the staff report and couldn't find how it was addressed.

Dommer: Can you explain what you mentioned earlier about a negative declaration being prepared in a program format but the responses coming in on a project level?

Tolentino: The request at this time is for changes to the zoning and land use designations and inclusion in the Urban Service Area. There is no specific project that is proposed. So the level of review is more general, as opposed to a closer review of the actual physical impacts that may result from a specific project. Based on our consultant's review of the comments that were received, they were more applicable to project level proposals. Once a specific project application comes in, we will be doing a project level analysis and we feel that these comments are more applicable to that.

Dommer: So are we supposed to ignore or dismiss some of those comments?

Tolentino: I wouldn't say dismiss them, but they would be more applicable to a project in the future.

McKay: Regarding the flood control issue, barring the completion of PL 566, is staff comfortable that we're going to be okay with this?

Tolentino: This would be treated as any other project that is being processed through the City. Absent PL 566, the project would be responsible for ensuring that they're not impacting the flood plain and also providing appropriate storm water control.

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Mueller: Since it is inside the flood plain, it would more than likely be required to have to build at least one foot above the flood elevation. The difference between the lowest point on the property and a foot above the flood plain could be 5-6 feet. It could look something like the Taco Bell on Monterey that is built up quite high due to the flood plain issues.

McKay: This seems to be a shift in thinking from the intent of the General Plan. Where did the initial direction from the City of Morgan Hill come from? Was it staff or City Council?

Tolentino: It was actually initiated by staff—the Community Development Department in 2008. The idea of changing the land use designation to Light Commercial-Residential (CL-R) was presented to City Council prior to formal initiation of the application in order to get their authorization and consent.

Moniz: Will LAFCO adopt our document as their own, and if so could they require an additional report if it's inadequate?

Akoni Danielsen of David J. Powers Consultants, appeared: CEQA sets up a situation where there is one lead agency and it's the agency that is responsible for approving or carrying out a project. When there are multiple public agencies that need to take action to implement a portion of a project, they assume the responsible agency role to establish the base line, to create the thresholds, to identify impacts, to identify mitigation, and whether to prepare an Initial Study or an EIR. All that falls with the lead agency. Responsible agencies get to comment. To the extent that a responsible agency ultimately isn't satisfied with the lead agency's document, CEQA provides that they can sue. It does happen on occasion. Or they would have to wait until the lead agency has taken all its actions and then find that there had been some change in conditions under which the project occurred that warranted new review. Then they could step in and do their own report. For now, the City is the lead agency and it retains the discretion on what environmental baseline to use and what mitigations to identify. The options of a responsible agency are fairly limited. So unless there's some change in the environment, the responsible agency can either use the document, take the lead agency to court, or disapprove the project.

Moniz: In reading LAFCO's letter, they cite CEQA and claimed the document is inadequate. You cited CEQA and said it was. So it sounds like LAFCO has to accept the declaration.

Danielsen: Yes, short of taking the City to court or waiting until it could be found that the environment had changed. It seems there is a misunderstanding about this being program level versus project level. We're talking about zoning that will allow a range of uses within a development envelope. We also don't know the timing. There isn't a specific amount of development or a specific site plan. Community for Green Hills and Audubon Society were treating this as if we knew precisely what buildings, parking, businesses, etc. would be on the site but at this time, we don't.

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Mueller: Can you clarify under CEQA why “probable case” works in this situation?

Danielsen: CEQA doesn’t specifically address that question. What CEQA says is what is reasonably foreseeable. It has been the City’s experience that when a property is redesignated to a land use category, and has a range of units both high and low, it is not typically the case that a project develops at the maximum theoretical number of units possible. So we used what we thought was a reasonable development schedule in making assumptions.

Mueller: On a previous application sent to City Council, LAFCO commented on not having a climate action plan in place. Why under current CEQA is a commitment to do a plan sufficient at this point?

Danielsen: We did a calculation of emissions, assuming that all this development would take place by 2020, and found that these would mostly be net new emissions. It’s not surprising that new development is going to have emissions that generally exceed BAAQMD (Bay Area Air Quality Management District) thresholds. Because this is an amendment to the General Plan there isn’t a specific development that could be conditioned to increase transit use, or increase building efficiency, or decrease water consumption, etc.

Moniz: Were you doing to answer some questions asked earlier?

Danielsen: Regarding E-14, as I explained before, the City is the lead agency. LAFCO’s discretion as a responsible agency is limited. And I think this is a misunderstanding about the level of review that’s possible now. The expectations go beyond what the City can do here. Regarding E6- E8, LAFCO requests that the Initial Study talk in detail about the USA expansions that do or do not conform to a series of LAFCO policies. The response here is that the Initial Study is focused on the direct and reasonably foreseeable indirect environmental changes that are going to result from these land changes. That’s what we did. The Initial Study is not intended or required to provide an exhaustive analysis of the project’s conformance with every applicable LAFCO policy. Those details would ultimately be discussed in the application to LAFCO. There was another question about the flood control issue. We had attached an article from the Gilroy Dispatch describing PL-566. There isn’t a specific time frame given. The planning horizon for the General Plan is several decades. The assumption is that development will either follow PL-566 in which case flood protection would be provided. But in the event that development occurs sooner than that, there would need to be a flood study for that project. They would have to show that the project would not cause a consequence offsite. If they couldn’t do that in a project level document, it would have to be in an EIR.

Mueller: A couple of references were made to the Butterfield detention pond. I don’t think this project has any direct tie to the Butterfield detention pond, which is east of the railroad tracks. It might connect to Llagas Creek but that would be far to the south of the project.

Danielsen: No, there’s not a clear connection.

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Tolentino: There is no direct tie, but an individual project would have to prepare a flood study as part of a cumulative analysis that would factor in the Butterfield detention pond.

Koepp-Baker: Did you make a direct inquiry with the Water District to be part of this study?

Tolentino: We did make a direct inquiry and the information we received was that the current schedule identifies construction to begin in 2016 and be completed in 2017, and that's dependent on funding.

McKay: Getting back to the land use, is there a potential for the land use mitigation plan to cost the City money because we would have to purchase other lands?

Danielsen: Of the 67 acres involved in the project, there is only one parcel (7.5 acres) that is mapped as prime farm land according to the Santa Clara County Important Farmland Map. Using the land evaluation and site assessment model that the legislature put into CEQA to protect agricultural land, and applying that to the 280 acres within the sphere of influence, 20 percent of those or 78 acres are currently an agricultural use. Based on the size of the parcel, the suitability of the soil, the amount of other urban development and protected land around it, this came in as a less significant parcel, scoring only about 50 out of 100. So for CEQA purposes, we didn't find this significant and needing mitigation. That is separate from what LAFCO may ultimately say applying its own policies.

McKay: So is there a possibility that we would have to match acre-for-acre somewhere else, the four acres mentioned?

Danielsen: I don't believe that the City would have to. It would be incumbent on the property owner if that was LAFCO's requirement.

Dommer: One of the documents says that the total acreage of area to be added to the USA shall not exceed 20 acres. This is 67 acres? How do we get around that?

Tolentino: The 20 acre limitation is for residentially designated properties. Of the 67 acres, only two parcels are proposed for the residential zoning designation. One is the 7.5 acres of farmland we were just discussing. The other is Oakwood School, which would retain its existing residential designation, but it is already built and within the city limits. So it was interpreted that the policy would not apply to Oakwood School. That leaves us only with 7.5 acres of residential, which is below the 20 acres.

Mueller: Since we don't know exactly when we'll be applying to LAFCO, how long would this document be valid?

Danielsen: Every environmental document is valid as long as the information contained therein is still accurate. If the environment baseline changes, a new report would be necessary.

Mueller: Would the Butterfield South extension be enough of a trigger?

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Danielsen: So the question is: would the addition of traffic on Butterfield, that didn't exist at the time of the analysis, cause a new impact that we hadn't accounted for? At a minimum, the City would need to evaluate that.

Mueller: Could that cause LAFCO to ask for things to be redone?

Danielsen: If they found something had changed in a substantial way, they could ask for an update to address that change.

Moniz opened the floor to public hearing:

Don Hordness, owner of Royal Oaks Mushrooms, appeared: We have been working on this project a long time. We recognize that mushroom farms do not belong next to housing so we bought some property offsite. I have met with LAFCO five times. We've talked about their land use issues and there are no answers. My frustration is that this just keeps going on and on. We've waited long enough. I am willing to do whatever is necessary. I'm asking the Commission to approve this, and then I'll deal with LAFCO.

Koepp-Baker: Do you have a proposed date when you're going to sell this land?

Hordness: That site is an excellent site for a senior assisted living center. That's where I'd like to start.

Mark Rauser appeared on behalf of the Morgan Hill Bible Church: The City needs to take control and not let the county make inappropriate decisions regarding the southern gateway to Morgan Hill. So we ask for the Commission's approval.

Moniz closed the floor to public comment.

Benich: I've reviewed the documents and heard the speakers but I have a real problem with this project. 1) The City spends a lot of time and money developing the General Plan. We are at the point where we need an update to the General Plan. I'm concerned that developers are going to piecemeal changes to the zoning and General Plan, and that's wrong. Our City Council is negligent in not having started the General Plan update already. It should have been started last year. 2) We're developing a plan to look at the major intersection of Highway 101 and Tennant Avenue with a major shopping center there. I'd like to know how this might impact that project, and vice versa. 3) The biggest piece of property of the 65 acres is the 25 acre parcel (APN 779-04-073) that is currently zoned for estate homes. That was done intentionally to allow residential density to feather out towards the boundaries. This plan is proposing to change that to 9,000 square foot lots, which would mean up to 125 homes on that property. That's not in keeping with the General Plan or with the vision for our city. For those three reasons, I cannot support this.

Moniz called for a break at 8:01 p.m. and reconvened at 8:09 p.m.

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Koepp-Baker: What advantage did the City feel was to be gained from having this project move forward?

Tolentino: With the commercial, it was to recognize existing uses in the area. It would also allow us to create the quality of development that would be appropriate for the southern gateway to the City. Under the county, while it remains mostly undeveloped, the uses we see out there are not what we would like to see long term. By moving it into the Urban Service Area and the city limits, we have that control in terms of development.

Koepp-Benich: So staff felt there was a benefit to including commercial, instead of just feathering out the residential?

Tolentino: There is already existing commercial. So Light Commercial-Residential is really a hybrid of the two designations. It allows some commercial, but again the non-retail type of commercial, but it also introduces residential. Under the current designation of Residential Estate 100,000, while it allows for the feathering of the area, the probability that someone is going to build an estate home at the southern part of town is not likely. It just doesn't represent the most desirable location for an estate home.

Koepp-Baker: What percentage of costs of development that we foresee happening there in the future is going to be carried by the City?

Tolentino: The city isn't proposing any development there right now. There would be costs for public safety services such as police and fire that are provided when properties are included in the Urban Service Area. Those would be borne by the City. Utility extensions would be borne by the applicants as they develop their properties.

Mueller: I don't have a problem bringing this acreage into the Urban Service Boundary. LAFCO has said that they're not going to let this happen any other way than to become part of Morgan Hill. The Morgan Hill Bible Church and the Country School [Oakwood] have been a plus to the City. And bringing the other parcels in makes the application more palatable to LAFCO. But I have a big problem with the land use. Bringing it in as non-residential ties our hands for the foreseeable future. I was on the 1990 General Plan task force which originally put Butterfield on the map and made the connection to Watsonville Road. The development of the city towards Silveira Park, which is not a natural park but a habitat park, means that we're going to have to "feather" pretty dramatically. Some nice homes in a gated community are on the opposite side of the lake at the end of Easy Street. They're not residential estate but they're large homes. So I could agree to this project if it had the residential land use that is in the General Plan. That would allow us to bring it into the USA and allow us to make decisions in the future about altering the nature of development of the gateway to the community.

Moniz: I would like to echo what's been said about the ability of the City to regulate that gateway corner and I think that's an important part of the application. I am sympathetic to the owners. I think there is a mountain of work ahead. This is just a warm up for the efforts yet to come. The community benefit element to this

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application is a bit shaky. I'm not sure LAFCO can be convinced but I am supportive of this application.

Tanda: We're being asked to take action on the environmental document, the Urban Service Area application, the GP amendment and the zoning amendments. With respect to the environmental document, I would be inclined to accept the consultant's position that the Initial Study and Mitigated Negative Declaration are adequate for this proposal. I still need to be convinced about the other parts, though. I could not find where the comments from LAFCO are addressed in the staff report. I could support it if the staff report adequately addressed the comments from LAFCO.

Dommer: I'm okay with the annexation but I'm not okay with the zoning and maybe for different reasons than have been expressed here. The strength of a small city is dependent on the quality of its main corridor, or Monterey Road. Moving southward from the downtown area, the quality of the commercial begins to break down and then picks up again at Tennant. If we allow commercial development south of Watsonville Road, we would lose the ability to focus investment and fix up the areas south of Dunne Avenue.

McKay: I like the idea of annexation but am in a quandary about the proposed use. I thought one of the primary reasons this is proposed to be rezoned as commercial is due to the sound contours, because Monterey and Watsonville are noisy streets.

Tolentino: I'm not sure that directly contributed to the proposal for that land use designation, but it does help in terms of development. Obviously, commercial would have a different requirement for sound levels as opposed to residential.

McKay: So that would be one mitigating factor. It sounds like this was previously proposed in 2008 and City Council is going to want to keep the General Plan intact. But if this is a little bit more generally accepted as the way to go, that helps to mitigate. However, I think we need to be very conscious of our greenbelt buffer. It just seems that the zoning request is out of place with the General Plan.

COMMISSIONERS MUELLER AND MCKAY MOTIONED TO APPROVE THE MITIGATED NEGATIVE DECLARATION AND THE ASSOCIATED MONITORING PLAN

**THE MOTION PASSED (7-0-0-0) WITH THE FOLLOWING VOTE:
AYES: UNANIMOUS; NOES: NONE; ABSTAIN: NONE; ABSENT: NONE.**

Mueller: We don't have an option to look at a residential designation?

Tolentino: That is correct. The environmental document didn't analyze this as 100 percent residential, so if that is something the Commission wanted to pursue you would have to recommend denial of the current application and the applicant would have to resubmit with a residential designation.

Dommer: Has residential been considered for any portion?

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Tolentino: I believe Commissioner Mueller is referring to a 100 percent residential designation with the exception of the Bible Church, which would remain Public Facility.

COMMISSIONERS MUELLER AND BENICH MOTIONED TO RECOMMEND DENIAL OF THE URBAN SERVICE AREA EXPANSION, THE ZONING REDESIGNATION AND THE GENERAL PLAN MAP CHANGE

[Mueller recommended denial for the following reasons: 1) The land use goes against critical General Plan policies which have to do with commercial development south of Watsonville Road. It goes against the feathering that has been envisioned for the area. 2) If it comes in as non-residential land, our hands are tied for many years to come. If that decision turns out to be wrong, we have no option to change it. That's not in the best interests of the City for this large of an acreage and this important of a gateway corner.

Discussion:

Tanda: I am in support of the motion to deny for the impacts that LAFCO identified regarding infill and agricultural mitigation. Their policies are well grounded.

Moniz: If the applicants came back at a later date with an application for a different designation, could they use the same environmental document?

Tolentino: They could use the environmental document as a basis and then make any changes as necessary to address additional concerns. But that could be used as the basis for a new environmental document.

Danielsen: We could look at the degree to which the project was changing and evaluate the impacts against what was already in the document. If the results were essentially the same with no new impacts and no substantial increase in severity of impacts, then the city could adopt an addendum to this Negative Declaration.

Mueller: But a lot of what has been done would still be valid?

Danielsen: Yes.

Dommer: What would be the time frame?

Danielsen: It could be a couple of months.

McKay: I thought LAFCO only accepts these applications about one a year?

Tolentino: We've actually missed the window for this year, so the soonest they could apply to LAFCO would be next year. We do have other applications that are in the queue for next year as well, so they would be bundled together for one submittal.

Mueller: One of the documents mentioned something about LAFCO not accepting

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another application until the state mandated island annexations were complete.

Tolentino: I believe that was completed two years ago.

Mueller: There are parts of Holiday Lake Estates that aren't annexed and that was part of the island annexations.

Linder: It is true that we have not fully annexed Holiday Lake Estates. The efforts to form the necessary assessment districts fizzled out. That was a county effort, though. They took the lead and then abandoned the effort, so that wouldn't preclude further application by us. We have annexed all the islands.

THE MOTION PASSED (6-1-0-0) WITH THE FOLLOWING VOTE:
AYES: BENICH, KOEPP-BAKER, MUELLER, TANDA, DOMMER, MCKAY;
NOES: MONIZ;
ABSTAIN: NONE;
ABSENT: NONE.

PUBLIC HEARINGS:

2.DEVELOPMENT AGREEMENT AMENDMENT(S):

Ten residential projects with existing development agreements are requesting amendment to their respective agreements to insert language allowing for participation in the City's Below Market Rate Reduction Program. The Below Market Rate Reduction Program will allow for potential elimination of the Below Market Rate units or to pay an in-lieu fee.

- A. DAA-04-05E: BARRETT-ODISHOO**
- B. DAA-05-01H: MISSION VIEW-MISSION RANCH**
- C. DAA-05-02G: COCHRANE-LUPINE**
- D. DAA-05-07G: WRIGHT-MANANA**
- E. DAA-05-12A: SAN PEDRO-AHMADI**
- F. DAA-06-02F: SAN PEDRO-ALCINI**
- G. DAA-06-04D: DIANA-KB HOME**
- H. DAA-09-03A:MURPHY-KB HOME**
- I. DAA-09-04G:E.DUNNE-UCP**
- J. DAA-09-06: E.CENTRAL-CARRIAGEWOOD**

Linder presented her staff report and stated that Mission View-Mission Ranch would also like extensions to their building allocations added to their development agreement amendment, so they want their item pulled until the December meeting.

Koepp-Baker: Are all the developers in agreement?

Linder: I have had many over-the-counter discussions and I hope everyone understands.

Tanda: In looking at the Diana-KB Home project, I do not understand what is here. I thought all 32 units had not been completed but you're saying it actually has?

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Linder: There are two phases to the project. There are 32 under construction right now. So they've met that under the current program. But the fiscal year for the next group of allocations only qualifies for buyout under Council Resolution 6450. The buyout provision would only pertain to that one fiscal year. That fiscal year would not qualify for further reduction. Therefore, that portion of the language would not be applicable to what they have left to do.

Tanda: I've attempted for the last three meetings to make this simpler and yet still be equitable for everyone. If anything, I see that it has gotten more complex. I would still continue to advocate that the buyout, which is a 50 percent reduction in fees, would be good for every unit. [Commissioner Tanda presented a table to demonstrate his solution to making the buyout simpler.]

Linder: Resolution 6450 was meant to be an incentive to build. If you just pay \$75,000 for a BMR and then walk away from the phase, it does not create an incentive to build.

Moniz opened the floor to public comment.

Mueller disclosed that he met with some of the stakeholders.

Brian Barry with Tri Pointe Homes appeared on behalf of the Jasper Park and Carriagewood projects.

Moniz: Do you understand what you're getting into?

Barry: Yes, to the extent possible at this time.

Dick Oliver appeared on behalf of Dividend Homes: In scrutinizing the BMR tables, I overlooked that I also applied for some extension requests. I would like to pull Dividend's items off the agenda until the next meeting so that we can work out the details of the extensions and I won't have to re-file. Unfortunately, I can't remember exactly which project it was, so I'd like to ask for all three of the projects to be pulled until the next meeting so that I can be sure.

Moniz closed the floor to public comment.

COMMISSIONERS MUELLER AND DOMMER MOTIONED TO APPROVE THE RESOLUTION AMENDING THE DEVELOPMENT AGREEMENTS FOR DAA 04-05E BARRETT-VILLAS OF SAN MARCOS, DAA-05-12A SAN PEDRO-AHMADI AND DAA06-2F SAN PEDRO-ALCINI

THE MOTION PASSED (6-1-0-0) WITH THE FOLLOWING VOTE:

AYES: BENICH, KOEPP-BAKER, MUELLER, MONIZ, DOMMER, MCKAY;

NOES: TANDA;

ABSTAIN: NONE;

ABSENT: NONE

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COMMISSIONERS MUELLER AND MCKAY MOTIONED TO CONTINUE DAA 05-01H MISSION VIEW-MISSION RANCH, DAA-05-02G PEET-LUPINE AND DAA-065-07G WRIGHT-MANANA TO THE DECEMBER 13, 2001 MEETING

**THE MOTION PASSED (7-0-0-0) WITH THE FOLLOWING VOTE:
AYES: UNANIMOUS; NOES: NONE; ABSTAIN: NONE; ABSENT: NONE**

**Moniz recused himself from the floor due to a conflict of interest at 9:10 p.m.
Vice-chair Benich took over as Chair.**

COMMISSIONERS MUELLER AND MCKAY MOTIONED TO APPROVE THE RESOLUTION AMENDING THE DEVELOPMENT AGREEMENTS FOR DAA-06-04D DIANA-KB HOME, DAA 09-03A MUPRHY-KB HOME, DAA-09-04G DUNNE-JASPER PARK AND DAA-09-06A CENTRAL-CARRIAGEWOOD

**THE MOTION PASSED (5-1-0-1) WITH THE FOLLOWING VOTE:
AYES: BENICH, KOEPP-BAKER, MUELLER, DOMMER, MCKAY;
NOES: TANDA;
ABSTAIN: NONE;
ABSENT: MONIZ**

Chair Moniz came back on the floor at 9:12 p.m.

**3.DEVELOPMENT
AGREEMENT, DA-
11-06: BARRETT-
MH DOS:**

A request for approval of a development agreement for a 34-unit portion of the 52-unit single-family residential project located on the northwest corner of the intersection of Barrett Ave. and San Ramon Dr. in the R-1 7,000 RPD zoning district (APN 817-76-019, 021 & 022).

Linder presented her staff report.

Tanda: Is it correct that if this project completes 10 units prior to September 30, 2012, their BMR requirement would be reduced to .57 units?

Linder: Correct.

Mueller: Will the homeowners' association that exists now be the homeowners' association for the entire project? Is there a way to guarantee that?

Linder: That's always been the assumption, but I would recommend on Page 2 of Exhibit D that language be added saying that it be maintained by the same HOA established for the 18 lots of phase 1. I would also recommend adjusting the dates on Exhibit B by six months in order to correspond with a December commencement date, so obtaining building permits would become November 30, 2012.

Moniz opened and closed the floor to public hearing.

COMMISSIONERS MUELLER AND KOEPP-BAKER MOTIONED TO

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APPROVE THE DEVELOPMENT AGREEMENT WITH THE MODIFICATION TO INDICATE THE SAME HOA FOR PHASE 1 AND A CHANGE IN DATES IN EXHIBIT B TO CORRESPOND WITH A DECEMBER 30 COMMENCEMENT DATE

Tanda: I'm still trying to figure out the in-lieu fee so I completely understand what the developers are going to pay. On Table 2 of Article 6, if the developers only complete one unit prior to September 30, 2012, do they multiply 1.86 x \$139,286 or is it 1.86 x \$75,000?

Linder: It is 1.86 x \$150,000.

Tanda: Then how is this consistent with City Council's position that the buyout will be \$75,000 per unit?

Linder: Council's purpose for the program is an incentive to pull permits. If we put \$75,000 at the top column, all you would have to do to earn the buyout is pull one permit. Staff didn't recommend or see that as an adequate incentive.

THE MOTION PASSED(6-1-0-0) WITH THE FOLLOWING VOTE:

AYES: BENICH, KOEPP-BAKER, MUELLER, MONIZ, DOMMER, MCKAY;

NOES: TANDA;

ABSTAIN: NONE;

ABSENT: NONE.

4.DEVELOPMENT AGREEMENT AMENDMENTS:

Three residential projects with existing development agreements are requesting amendment to their respective agreements to extend the commencement of construction deadline by one year. Two of the three projects are also requesting to insert language allowing for participation in the City's Below Market Rate (BMR) Reduction Program.

- A. **DEVELOPMENT AGREEMENT AMENDMENT, DAA-09-02: CLAYTON-O'BRIEN:** A request for a development agreement amendment to extend the commencement of construction deadlines for one year. The project consists of 7 units on an approximately 3.6 acre parcel on Clayton Ave, north of Peebles Ave (APN 726-48-012).
- B. **DAA-05-13F: JARVIS-MADRONE PLAZA:** A request to insert language for participation in the City's BMR Reduction Program and extend the commencement of construction deadline by one year for 31 building allocations (18, FY 2006-07 and 13, FY 2007-08). Of the 134 units in the project, the applicant has been awarded 102 building allotments. The project is located at the southeast corner of Cochrane Road and Monterey Road in a R3/PUD, Planned Unit Development Zoning District (APNs 726-49-001 thru -079).
- C. **DAA-09-01A: MCLAUGHLIN-MALECH:** A request to insert language for participation in the City's BMR Reduction Program and extends the commencement of construction deadline by one year for the four-unit project.

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The project is located on the west side of McLaughlin Avenue, approximately 275 feet north of E. Central Avenue in the CL-R, Light Commercial-Residential Zoning District (APN 726-24-016).

Tolentino presented her staff report.

Moniz opened the floor to public comment.

David Baker appeared on behalf of the O'Brien Foundation: This is our first foundation request. We do not build homes. We have been looking for a developer. We now have Signature Homes as the builder. The foundation is a non-profit charitable organization so the other company that Mr. O'Brien owns, O'Brien Homes, cannot build the homes.

Benich: What step is the applicant at?

Tolentino: They have completed steps 1-4. They have tentative map approval, they have submitted for final map and improvements plans and they do have a development agreement but they have not submitted for a design permit.

Baker: We have plan check for the improvement plans but we have not submitted building permit plans because we did not have a builder, but we do now.

Mueller: Has it closed escrow?

Baker: No, they're going to take it down a couple of homes at a time.

Mueller: Are they going to buy the whole project or not?

Baker: They're going to buy the project to preserve the foundation.

Bill McClintock of MH Engineering appeared on behalf of the applicant: This would be the first time an extension has not been granted on the first request. This project is unique in that site review is required prior to the map recording. Site review requires architectural elevations and landscaping plans. The streets already exist. And since these lots are half acre lots, it's really only the site specific that you'll be looking at in the site review. We'd like to try to get our map recorded and then do a site review on a lot-by-lot basis. That's practical in this situation. It has existing improvements, streets and utilities. And the map is ready to record. Nothing will be changing except the architecture. It seems the City would appreciate us bringing in the plans that are going to be built by the real builder, rather than something we have no intention of building just to meet the requirements.

Benich: How many units are in the project?

McClintock: There are seven units total, but five in this phase. We are up against a deadline for the first five. We wouldn't be losing the other two but it makes no sense to have to re-file. They do spend a lot of money in Morgan Hill and have invested in our community. It wouldn't be a good message to be sending investors.

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It's unreasonable to reject at least one extension.

Moniz: The title report reflects the charitable organization as the owner?

Rebecca: As far as I know, that's correct.

Koepp-Baker: What is the O'Brien Foundation?

Baker: It's a non-profit foundation that provides education to underprivileged children.

Koepp-Baker: So it's the foundation that has invested in this property?

Baker: Dennis O'Brien donated the land to the foundation along with other cash and assets. He's a very charitable man and that's why I have worked for him for so long. I am his sole employee and run the foundation. Shame on me that I haven't gotten this done quicker but times have been tough in trying to get a builder and maintain the foundation.

McKay: When do you expect to have a contract?

Baker: I spoke to the project manager and he said he will have a letter of intent with terms to me tonight. Jim Gilbert, who owns Signature Homes, and Dennis O'Brien have worked together for years and years.

McKay: How quickly do you anticipate design drawings?

Baker: I think he's going to rework the stuff we preliminarily submitted in the design package so it's probably a couple of months.

Mueller: So it's basically start all over with the process?

Baker: We have improvement plans and final map done.

Mueller: But the streets are already done. If you're going to re-do the home design, that's the key piece left to do. That happens almost every time a project is sold; it's redesigned. There's nothing new about that. It's just what happens.

Baker: It was originally designed for six one-acre lots. We had to redesign plans for all the water and sewer laterals and do some extra improvements on Peebles. MH Engineering has the mylars for the final map ready to go. It has taken a lot of time do to that.

Mueller: Where is Signature Homes on their other project in Morgan Hill?

Tolentino: It's my understanding that they're in the environmental process.

Mueller: So they've been moving forward?

Tolentino: As far as I am aware.

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Mueller: I'm going to suggest that we continue this until our next meeting and I want to see Signature Homes here and I want a commitment on some action dates to make this project happen.

Baker: I'd appreciate that opportunity.

Moniz closed the public hearing.

Moniz: Is this their first request for an extension?

Tolentino: Yes.

COMMISSIONERS MUELLER AND KOEPP-BAKER MOTIONED TO CONTINUE DAA-09-02 CLAYTON-O'BRIEN TO THE DECEMBER 13TH MEETING

Benich: I agree with Commissioner Mueller. This is a tough one, because we as a commission have been tasked with drawing the line on extensions and that means being through point no. 6. However, this is the first time for such a request.

Dommer: I agree.

McKay: I agree, because if they're ready to build, I don't want to stand in the way.

**THE MOTION PASSED (7-0-0-0) WITH THE FOLLOWING VOTE:
AYES: UNANIMOUS; NOES: NONE; ABSTAIN: NONE; ABSENT: NONE**

COMMISSIONERS MUELLER AND BENICH MOTIONED TO APPROVE THE DEVELOPMENT AGREEMENT AMENDMENT FOR DAA-05-13F JARVIS-MADRONE PLAZA

**THE MOTION PASSED (7-0-0-0) WITH THE FOLLOWING VOTE:
AYES: UNANIMOUS; NOES: NONE; ABSTAIN: NONE; ABSENT: NONE**

COMMISSIONERS MUELLER AND BENICH MOTIONED TO APPROVE THE DEVELOPMENT AGREEMENT AMENDMENT FOR DAA-09-01 MCLAUGHLIN-MALECH

**THE MOTION PASSED (7-0-0-0) WITH THE FOLLOWING VOTE:
AYES: UNANIMOUS; NOES: NONE; ABSTAIN: NONE; ABSENT: NONE**

**OTHER
BUSINESS:**

**5.MULTI-FAMILY
VACANCY RATE
REPORT:**

Biannual review of the multi-family vacancy rate as required in accordance with Chapter 17.36 of the Morgan Hill Municipal Code.

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Linder presented the staff report and stated that from the survey that was done it was found that there are 1185 units total and only 9 of those units vacant, which is a 0.76 vacancy rate.

Mueller: How is the market rate condo conversion project progressing? Have they started their EIR work?

Linder: They did start but they're having current difficulties with the water district.

COMMISSIONERS MUELLER AND TANDA MOTIONED TO APPROVE THE BI-ANNUAL MULTI-FAMILY VACANCY RATE REPORT

THE MOTION PASSED (7-0-0-0) WITH THE FOLLOWING VOTE:

AYES: UNANIMOUS; NOES: NONE; ABSTAIN: NONE; ABSENT: NONE

ANNOUNCEMENTS / COMMISSIONER IDENTIFIED ISSUES

Moniz: There will be no more meetings until December 13th.

Benich: Should we propose that the December 13th meeting start early?

Mueller: We should start at 5:00 p.m. and work on the global issues.

Moniz: Some people work until 5:00 p.m., so maybe 5:30 p.m.?

[The commissioners indicated consensus.]

CITY COUNCIL REPORTS

Tolentino: At the last meeting City Council considered an appeal application that was submitted on Commission's approval of the Flex Academy. Council denied the appeal, which means they upheld Planning Commission's approval with some added conditions.

ADJOURNMENT

Noting that there was no further business for the Planning Commission at this meeting, Chair Moniz adjourned the meeting at 9:53 p.m.

MINUTES RECORDED AND TRANSCRIBED BY:

ELIZABETH BASSETT, Development Services Technician